

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 11561 of 2004

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ? YES

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair copy
of the judgment ? NO

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ? NO

5 Whether it is to be circulated to the civil judge
? NO

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AMARSINHBHAI NARSINHBHAI CHAUDHARI & 5 - Petitioner(s)

Versus

PUNIYABHAI UKADIYABHAI KOTWADIA - Respondent(s)

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Appearance :

MR RD RAVAL for Petitioners

MR DN VAKIL FOR HL PATEL ADVOCATES for Respondent

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 07/10/2006

ORAL JUDGMENT

1. By this petition under Article 227 of the Constitution of India, the petitioners challenge the judgement and order dated 2nd January, 2002

passed by the Joint District Judge, Surat, at Vyara (hereinafter referred to as the "Appellate Court"), whereby the appeal preferred by the respondent-plaintiff has been partly allowed and the order dated 31st January, 2001 passed by the learned Civil Judge (Junior Division), Vyara (hereinafter referred to as the "Trial Court") on the plaintiff's application Exhibit-5 under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure has been partly modified.

2. The petitioners are the original defendants and the respondent is the original plaintiff in the proceedings before the Trial Court. For the sake of convenience, the respondent is hereinafter referred to as "the plaintiff" and the petitioners are referred to as "the defendants".
3. The controversy involved in the present case pertains to a pucca construction situated next to the plaintiff's house No.254 situated in survey No.204 of Block No.231 of Moje Chhindiya, Taluka Vyara, District Surat (hereinafter referred to as the "property in dispute").
4. It is the case of the plaintiff that he is the owner and occupant of house No.254 situated in survey No.204 of Block No.231 of Mouje Chhindiya, Taluka Vyara as well as the pucca

construction (the disputed property) situated next to his House No.254. That the said lands are of restricted tenure and are governed by the provisions of Section 73AA of the Bombay Land Revenue Code, 1879. It is the case of the plaintiff that he has been living in house No.254 with his family since his birth and that, after his marriage in 1994-95, he had constructed the pucca building adjoining his old house and had started residing there with his wife and children. That the defendants had persuaded him to adopt Christianity and that, upon adopting the said faith, he had put up the sign of a Cross in front of his house. That thereafter, he had again reverted to Hinduism and upon reconversion, he had removed the Cross and put up photographs of Hindu gods and goddesses and offered prayers.

5. It is further the case of the plaintiff that the respondents had tried to persuade him to renounce the Hindu religion, which he had refused and he had returned the books and registers in his possession. That on account of his re-conversion to the Hindu faith, the defendants No.1 and 2 had time and again threatened him and mentally tortured him and his family members. That in the morning of 21st November, 2000, the defendants No.1 and 2 had come to his residence and threatened him that they would come along with other Christian

brothers and offer prayers at his residence and that he should vacate his house failing which he would be forced to leave the village. That being intimidated by the aforesaid threats, the plaintiff had filed a complaint before the Police Inspector, Vyara, pursuant to which a bundobast had been placed at the plaintiff's residence on 25th November, 2000. That, in the presence of the police, the respondents No.1 and 2 along with their accomplices and about 40 to 50 persons had come to the plaintiff's residence for offering prayers and were prevented from doing so by the police. That several such attempts were made to take possession of the plaintiff's pucca house and that it was only on account of the police bundobast that the defendants had not been able to take possession of the disputed property. In the circumstances, the plaintiff had instituted the suit in question seeking relief to the effect that the defendants be restrained from entering the disputed property. The plaintiff had also filed an application under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure seeking temporary injunction to the effect that the defendants be restrained from disturbing his possession of the disputed property.

6. On the said application, ex-parte interim relief had been granted, which was extended from time

to time.

7. In response to the show cause notice issued by the Trial Court, the defendants filed their written statement thereto wherein they had denied the contents of the suit as well as application for interim injunction. It was stated that the plaintiff had stated incorrect facts in the plaint and had not come with clean hands. It was stated that the defendant organization, the Evangelical Church of India was a registered organization and its principal object was to establish, administer and maintain churches at different locations in India. Churches of this organization are situated at different places in India and a church has been established by this organization at Chhindiya in the year 1990 and the local members were managing the same. In the year 1995, the organization decided to construct a pucca building for the Church, whereupon, as the lands of survey No.204 of Block No.231 were mainly occupied by members of the organization, with their consent, a pucca Church building was constructed near their residences. The entire expenses for construction of the Church were borne by the local people and the organization. The construction of the Church was got done through a contractor by the name of Shri Sureshbhai. Prior to constructing the Church, the organization had executed an agreement on

stamp paper with the local people on 30th September, 1995 wherein the local people, including the plaintiff had put their signatures and given their consent. It was submitted that accordingly, the say of the plaintiff that he had constructed the building is proved to be wholly untrue. It was further stated that the plaintiff upon adopting the Christian faith had been discharging duties as Secretary of the Church and had been maintaining the accounts and signing other documents in such capacity. That till 19th November, 2000, the plaintiff has taken part in all the activities and religious rites of the Church. However, thereafter, upon being instigated by other people, he and his family members had instituted the present suit with a view to grab the property in dispute.

8. The Trial Court, after hearing the learned Advocates for the parties and considering the evidence on record, by an order dated 31st January, 2001, partly allowed the said application by directing that the defendant should not enter the plaintiff's house No.254 or cause any obstruction in it. However, insofar as the property in dispute is concerned, the Trial Court vacated the ex parte interim injunction granted earlier and rejected the prayer for interim injunction in respect of the said property. Moreover, the Trial Court also issued a direction to the plaintiff to forthwith

handover the vacant and actual possession of the property in dispute to the defendants.

9. Being aggrieved by the aforesaid order of the Trial Court insofar as the same rejected the prayer for grant of interim injunction in respect of the property in dispute and directed the plaintiff to forthwith handover the possession of the said property to the defendants, the plaintiff preferred an appeal before the Joint District Judge, Surat at Vyara (the Appellate Court). By an order dated 2nd January, 2002, the Appellate Court partly allowed the appeal and set aside the order of the Trial Court insofar as it had directed the plaintiff to forthwith handover the possession of the property in dispute to the defendant. However, considering the law and order situation prevailing in the tribal area, the Appellate Court also directed both the parties to keep the premises as it is till the disposal of the suit. It was directed that with a view to avoid tense atmosphere in the area, neither of the parties should offer any kind of worship either in favour of Hinduism or in favour of Christianity, in the disputed construction till the disposal. It was also directed that the property in dispute should not be utilized for any purpose till the disposal of the suit. The Appellate Court found it desirable that the District Magistrate, Surat and D.S.P., Surat Rural,

should take necessary preventive measures so as to avoid tense atmosphere in the area and to create harmony among brothers.

10.It is the aforesaid order dated 2nd January, 2002 passed by the Appellate Court, which is subject matter of challenge in the present petition.

11.Heard Mr.R.D.Raval, learned advocate for the petitioners (original defendants) and Mr.D.N.Vakil, learned advocate appearing on behalf of Mr.V.H.Patel for the respondent (original plaintiff).

12.Learned Advocate Mr.Raval has taken the Court through the entire record of the case. Various submissions have been made even on the merits of the suit, as regards the rights of the defendants over the property in question, placing strong reliance upon an agreement dated 30th September, 1995, Mark 17/2. However, as the present petition is directed against an order passed in appeal by the learned Joint District Judge, Surat at Vyara against the order passed by the learned Civil Judge (S.D.), Vyara, on an application for temporary injunction under Order XXXIX, Rule 1 and 2 of the Code, it does not appear to be just and proper to minutely examine and appreciate the evidence on record as the same would be likely to affect the final outcome

of the suit.

13. Learned advocate for the petitioners assailed the impugned judgement and order on the ground that once the Appellate Court had found that the petitioners had given financial aid insofar as the construction of the property in dispute is concerned; that the respondent was not the sole owner of the property in question; and that the photographs and other documents suggest the opening of the Church, the Appellate Court ought to have confirmed the directions given by the Trial Court. Drawing attention to the conclusions arrived at by the Appellate Court, it was pointed out that the observation that the possession and ownership of the disputed construction is likely to have far reaching effect; the conclusion that the possession, position and ownership of the property in dispute should be preserved as it is till the disposal of the suit, as well as the directions issued to the District Magistrate, Surat and the D.S.P., Surat Rural to take necessary steps to preserve the property as it was on the date of filing the suit till the disposal of the suit; were not substantiated by the evidence on record. It was urged that there was nothing on record to show that any tense atmosphere has been created in the concerned area in connection with the dispute involved in the present case. It was submitted that, in the circumstances, the

Appellate Court was not justified in arriving at conclusions which were not substantiated by the evidence on record.

14. It was submitted that there was no riotous situation, and that no report as regards the law and order situation had been ever called for during the course of the proceedings. It was argued that the Appellate Court instead of deciding the issue regarding property rights, had gone off tangent and delved into issues of public order. Therefore, in absence of any findings to the effect that there was indeed a tense situation created in the said area, the aforesaid directions given by the Appellate Court were not warranted. It was submitted that the findings given by the Appellate Court are self-contradictory. It was argued that, in view of the findings recorded by the Appellate Court, the possession of the property in dispute should remain with the Church. It was submitted that dispossessing both the parties is not the mandate of the Appellate Court.

15. The learned advocate for the petitioner vehemently argued that the respondent has not challenged the order of the Appellate Court, which by implication means that he is not the owner of the property in dispute, and that, it is only with the intention of harassing the Christians, on instigation by certain persons,

that the respondent has instituted the suit in question. It was submitted that once the Court has found that the property in dispute is a Church, and as per the directions of the Appellate Court, the respondent is also restrained from enjoying the property, which has not been challenged by the respondent, it can be safely concluded that the respondent does not need the same. In the circumstances, there would be no harm in handing over the property in dispute to the petitioners. It is also submitted that minority religious activities ought to be protected by this Court.

16. It was submitted that the Appellate Court was required to base its decision upon consideration of the material available on record. That if on the basis of the evidence on record, it was possible to take two views, the Appellate Court could not set aside the order passed by the Trial Court on the ground that another view could have been adopted. It was submitted that the Appellate Court had retried the whole issue, thereby causing gross injustice to the petitioners. It was submitted that if there was complete miscarriage of justice, the Appellate Court would have been justified in interfering with the same. However, merely because another view was possible, no interference was warranted. It was submitted that, in the circumstances, the order of the Appellate Court

was vitiated on the ground of jurisdictional error. That, this Court in exercise of power under Articles 226 and 227 of the Constitution, was required to ensure that the Courts below act within the bounds of their jurisdiction, and therefore, the impugned order passed by the Appellate Court is required to be quashed and set aside.

17. In support of his submissions, learned advocate for the petitioners had placed reliance on the following decisions :

[a] The decisions of the Supreme Court -

(i) In the case of *Dorab Cawasji Warden v. Coomi Sorab Warden and others*, AIR 1990 SC 867, and

(ii) *Ram Sarup Gupta (dead) by Lrs v. Bishun Narain Inter College and others*, AIR 1987 SC 1242.

[b] The decision of the Rajasthan High Court in the case of *Smt. Vimla Devi v. Jang Bahadur*, AIR 1977 [RAJ] 196.

[c] The decision of the Delhi High Court in the case of *M/s G.M. Modi Hospital and Research Centre Medical Science v. Sh. Shankar Singh Bhandari and others*, AIR 1996 DELHI 1.

[d] The decisions rendered by this Court in the case of -

- (i) *M/s Hindustan Engineering & Construction Co., Ahmedabad v. Kalindi Co-op. Housing Society Ltd. & ors.*, 1992[1] GLR 261;
- (ii) in the case of *Administrator of Shri Shakti Group, Chandrakant Natverlal Agravat v. Hargovindbhai Shamjibhai & Sons*, 1993[1] GLR 434;
- (iii) in the case of *Vijaykumar Murlidhar Bochiwala v. Nitinbhai Manharlal Mehta and another*, 2000[3] GLH [UJ] 13;
- (iv) in the case of *M/s Ciba Geigy Ltd. v. M/s Sun Pharmaceutical Industries*, 1992[2] GLR 1053; and,
- (v) in the case of *Gujarat Fluorochemicals Ltd. v. Ranjitnagar Gram Panchayat*, 1997[1] GCD 77.

However, in the light of the view the Court is inclined to take in the matter, it would not be necessary to refer to the decisions cited above, in detail.

18. Mr. D. N. Vakil, learned advocate for the respondent submitted that the order passed by the Appellate Court was just, legal and proper, and did not call for any intervention on the part of this Court. It was submitted that the Trial Court had manifestly erred in directing

the plaintiff to hand over the possession of the disputed property to the defendants on an application for injunction made by the plaintiff. It was submitted that, at best, the plaintiff's application under Order XXXIX Rule 1-2 of the Code could have been rejected, but on an application filed by the plaintiff, no relief ought to have been granted in favour of the defendants. It was submitted that, accordingly, the Appellate Court was justified in setting aside the aforesaid directions issued by the Trial Court. It was submitted that, as by virtue of the order of the Appellate Court, the aforesaid directions by which the plaintiff was aggrieved had been set aside, there was no cause or reason for the plaintiff to challenge the judgment and order passed by the Appellate Court. It was submitted that, merely because the plaintiff has not challenged the order of the Appellate Court, no conclusion can be drawn that the plaintiff did not need the property in dispute. In conclusion, it was submitted that the impugned order is just, legal and proper, and does not call for any interference on part of this Court.

19. Upon perusal of the judgement and order dated 31st January, 2001 passed by the Trial Court, it can be seen that the Court has come to the prima facie conclusion that insofar as the plaintiff's house No.254 is concerned, the plaintiff has

been able to establish that he is in legal occupation of the said property, and that, therefore, the defendants are required to be restrained from disturbing his possession in respect of the said property. The Trial Court has also found that, insofar as the property in dispute is concerned, the plaintiff has failed to prove ownership of the said property and that, therefore, the plaintiff is not entitled to any injunction in respect of the same. The Trial Court was, therefore, pleased to restrain the defendants from entering into the house No.254 and causing any hurdles in respect of the same. The application of the plaintiff was accepted to the aforesaid extent. However, the *exparte* interim injunction granted earlier whereby the defendants were restrained from disturbing the possession of the plaintiff in respect of the property in dispute, was vacated with immediate effect. Moreover, while vacating the interim relief, the Trial Court also directed the plaintiff to forthwith handover the possession of the property in dispute, to the defendants.

20. The Appellate Court, in the plaintiff's appeal against the said order, vide its order dated 2nd January, 2002, has arrived at the following conclusions :

“[1] *Prima facie, appellant appears to*

be co-owner of block No.231 and survey No.204;

[2] Prima facie, suit by one of the co-owner to protect the right of other co-owner is tenable at law;

[3] Prima facie, there appears some dispute between the appellant and other co-owners, but other co-owners are neither on record, nor they support respondents' case;

[4] The panchnama prepared by Court Commissioner, prima facie shows more than one huts on survey No.204 along with pukka construction;

[5] Prima facie, there was household articles in pakka construction;

[6] Prima facie, there appears some financial aid by the respondents, so far as construction in dispute is concerned;

[7] Prima facie, the photographs and other documents suggest the opening of Church and subsequently saffron colour flag on it;

[8] Prima facie, it is not that simple case as it appears from the pleading;

[9] *Prima facie, there is some dispute between the followers of two different religion;*

[10] *Prima facie, the conclusion as to possession and ownership of disputed construction is likely to have far reaching effect;*

[11] *Prima facie, there is some evidence of the Contractor, to show the construction with the help of finance by respondents.*

[12] *Prima facie, the land is of new tenure and it cannot be transfer, assign or mortgage without having written permission from the competent authority;*

[13] *Prima facie, the possession, the position and ownership of the construction in dispute should be preserved, as it is, till the disposal of suit. The District Magistrate, Surat and D.S.P. Surat Rural should take necessary step to preserve it as it was on the date of filing the suit till the disposal of the suit;*

[14] *Prima facie, neither of the party should be allowed to offer any kind of religion worship, so as to avoid tense*

atmosphere in the area;

[15] *Prima facie, it is not a case in which the possession of the plaintiff / appellant should be protected absolutely. At the same time, it is not a case in which plaintiff/appellant may be directed to handover the possession to the respondents / defendants without having evidence on record.*

[16] *Prima facie, it appears that the possession of the premises on the date of the suit was with the plaintiff / appellant. There are two possibilities. It may be, plaintiff might have secured the possession by unlawful means before institution of the suit. Equally, it is possible that the appellant / plaintiff might be in permissible possession and might have converted into exclusive possession;*

[17] *Prima facie, the order of the Trial Court requires to be set aside, so far as direction to hand over the possession is concerned;*

[18] *Prima facie, it is necessary to direct both the parties not to offer any religion worship in disputed premise till the disposal of the suit;*

[19] *Prima facie, it is necessary to direct both the parties not to use the premises for any of the purpose and to keep it as it is till the disposal of the suit."*

21. After arriving at the aforesaid conclusions, the Appellate Court has issued the following directions :

"The direction by the Trial Court to hand over the possession to the respondents is hereby set aside.

The order by the Trial Court as to vacating the exparte injunction by the Trial Court is hereby confirmed.

However, considering the sensitive issue and considering the law and order situation prevailing in the tribal area, both the parties should keep the premises as it is till the disposal of the suit. Neither of the parties should offer any kind of worship either in favour of Hinduism or in favour of Christianity in disputed construction till the disposal of the suit, just to avoid tense atmosphere in the area.

It is further directed not to utilize the construction in dispute for any of the

purpose till the disposal of the suit.

It is desirable that the District Magistrate, Surat and D.S.P. Surat Rural should take necessary preventive measurement, so as to avoid tense atmosphere in the area and to create harmony among the brothers."

22. Upon perusal of the aforesaid judgement and considering the rival contentions, it is evident that the Trial Court, after appreciating the evidence on record, had come to the conclusion that the plaintiff has failed to establish the ownership rights over property in dispute. In the Appellate proceedings, the aforesaid findings have not been dislodged. Prima facie, from the evidence on record, it appears that the lands on which the property in dispute has been constructed were earlier held by the plaintiff as co-owner. Pursuant to the plaintiff and others having adopted Christianity, it appears that the plaintiff and other villagers, have by virtue of the agreement dated 30th September, 1995, permitted the defendants to put up a Church by way of a pucca construction, which was situated next to plaintiff's House No.254. From the material on record, it appears that the plaintiff was holding the property in dispute as Secretary of the Church. It also appears that, subsequently the plaintiff has reverted back to

Hinduism and has continued to occupy the property in dispute contending that the said property has been occupied by him and his family as residential premises ever since the construction thereof. There appears to be a serious dispute as regards the ownership of the land on which the property in dispute is situated. The aforesaid Civil Suit has been filed by the plaintiff seeking a permanent injunction against the defendants from disturbing his possession over the said property.

23. Upon going through the impugned judgement and order dated 2nd January, 2002, there does not appear to be any basis for the Appellate Court to come to the conclusions recorded at Serial No.9, 10, 13 and 14. When there is no material on record to show that there was any tense situation in respect of the property in dispute or that there was any dispute between the followers of two different religions, it is not possible to appreciate as to how the Appellate Court has arrived at the said conclusions. The learned Advocate for the respondent-plaintiff is also not in a position to point out any material to substantiate the aforesaid findings. In the circumstances, the directions issued pursuant to the said findings recorded by the Appellate Court are not justified.

24. For the foregoing reasons, it is held that the Appellate Court was justified in setting aside the order of Trial Court insofar as the directions issued against the plaintiff to handover the possession of the property in dispute to the defendants, is concerned. However, the order of the Appellate Court insofar as it has found that a sensitive issue is involved in the matter, and that, there is a law and order situation prevailing in the tribal area, stands vitiated as being without any basis. Consequently, the directions issued pursuant to the aforesaid findings also cannot be sustained.

25. It is clarified that the order of the Appellate Court insofar as it has set aside the directions issued by the Trial Court to the plaintiff to handover the possession of the property in dispute to the defendants has been upheld only on the ground that, on the plaintiff's application for injunction, the Trial Court could at best have rejected the application, which has rightly been rejected, but on an application made by the plaintiff, but no such direction could have been issued against him. However, upholding the order of the Appellate Court to the aforesaid extent shall not be construed as if this Court has held that the plaintiff was in possession of the property in dispute at the relevant time when the suit was

instituted. It is further clarified that, any view expressed by this Court is only a prima facie view and the Trial Court shall not, in any manner, be influenced by any of the observations and findings recorded in this judgement at the time of deciding the Civil Suit. It is also clarified that this order shall not preclude the petitioners from instituting appropriate proceedings before the appropriate forum in respect of their rights, if any, over the property in dispute.

26. In the above view of the matter, the petition partly succeeds. The following directions issued by the Appellate Court are hereby quashed and set aside:

"However, considering the sensitive issue and considering the law and order situation prevailing in the tribal area, both the parties should keep the premises as it is till the disposal of the suit. Neither of the parties should offer any kind of worship either in favour of Hinduism or in favour of Christianity in disputed construction till the disposal of the suit, just to avoid tense atmosphere in the area.

It is further directed not to utilize the construction in dispute for any of the purpose till the disposal of the suit.

It is desirable that the District Magistrate, Surat and D.S.P. Surat Rural should take necessary preventive measures, so as to avoid tense atmosphere in the area and to create harmony among the brothers."

27.The petition is, accordingly, partly allowed.
Rule is made absolute to the aforesaid extent,
with no order as to costs.

[HARSHA DEVANI, J.]

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